

1 IN THE UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 DEEP MARINE HOLDINGS, INC. § CASE NO. 10-03026-H1-ADV
§
5 VERSUS § HOUSTON, TEXAS
§ JANUARY 27, 2010
6 FLI DEEP MARINE, LLC § 3:00 P.M. TO 3:37 P.M.

7
8 MOTIONS #20 & #24

9 BEFORE THE HONORABLE MARVIN ISGUR
10 UNITED STATES BANKRUPTCY JUDGE

11 APPEARANCES:

12 FOR PLAINTIFF: SEE NEXT PAGE

13 FOR DEFENDANT: SEE NEXT PAGE

14 COURT RECORDER: KETTA CHUDOMELKA

15 CASE MANAGER: RISHONA SMITH
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1 HOUSTON, TEXAS; WEDNESDAY, JANUARY 27, 2010; 3:00 P.M.

2 **THE COURT:** Okay. We're here in Adversary
3 10-3026. We're going to take appearances in court and then
4 we'll take appearances on the telephone.

5 Who do we have here?

6 **MR. COHEN:** Good afternoon, Your Honor.

7 Jason Cohen and Trey Wood, for the Debtors.

8 **MR. RAY:** Your Honor, Hugh Ray, for the
9 Committee.

10 **THE COURT:** Who do we have in Washington? I'm
11 sorry, not in Washington, New York, I apologize.

12 **MR. PADUANO:** New York, right.

13 Good afternoon, Your Honor. It's
14 Anthony Paduano and Jason Snyder in New York, for the FLI
15 parties.

16 **THE COURT:** Thank you.

17 In New Orleans?

18 **MR. ZIMMERMAN:** Good afternoon, Your Honor.

19 Karl Zimmerman, Baldwin Haspel Burke and
20 Mayer, for Otto Candies, III; Otto Candies, Jr.;
21 Otto Candies, LLC.

22 **THE COURT:** All right.

23 In Austin?

24 **MR. BATTAGLINI:** Your Honor, this is
25 K.B. Battaglini, with Greenberg Traurig. I'm normally in

1 Houston. Special counsel for the Debtors, a motion pending.

2 **THE COURT:** Could you spell your last name for me
3 please?

4 **MR. BATTAGLINI:** B-a-t-t-a-g-l-i-n-i.

5 **THE COURT:** Thank you.

6 516 area code, who do we have?

7 **MR. DEYOUNG:** Your Honor, you also have
8 Michael deYoung here, also on behalf of FLI, as co-counsel.

9 **THE COURT:** All right.

10 In Houston, from -- I think that's
11 Haynes and Boone extension.

12 **MR. RUGGERO:** Yes, Your Honor, Peter Ruggero on
13 behalf of Paul McKim. We're not making an appearance today,
14 just merely monitoring the case.

15 **THE COURT:** All right. I'll go ahead and re-mute
16 your line. Thank you.

17 **MR. RUGGERO:** Thank you.

18 **THE COURT:** All right. I've got cross-motions to
19 compel and for protection. There was just a response that
20 was filed a few minutes ago, I think, by Mr. Paduano and it
21 references five requests for production, and in preparing
22 for the hearing, I didn't see a request for production that
23 only had five requests for production so I want to get -- be
24 sure that I'm -- what I'm dealing with is the right dispute.

25 So, Mr. Paduano --

1 **MR. PADUANO:** Yes, Your Honor. We skinnied it
2 down after attempting to speak to Counsel for the Debtor,
3 but it's -- it makes that Exhibit H to my affidavit and it
4 is toward the back of the document, Your Honor, is nine
5 pages from the -- eight pages from the back of the
6 affidavit, Exhibit H.

7 **THE COURT:** And so that's all that you're
8 requesting at this stage to compel are -- well, let me get
9 there, hold on. I've got H.

10 What page of H? Okay. Those five things
11 listed on Pages -- under "Document Requests."

12 **MR. PADUANO:** That's correct, Your Honor.

13 **THE COURT:** Okay. So that's all you're seeking
14 to compel.

15 I assume that's all you're then seeking
16 protection from now, Mr. Cohen; is that right, or --

17 **MR. COHEN:** If it's -- actually, as the Court has
18 stated, that is correct. In Mr. Paduano's motion to compel,
19 he asks for relief in the alternative.

20 Also, he's looking to possibly compel all 13
21 of his original requests for production as well.

22 **THE COURT:** Right, and that's what I'm trying to
23 figure out. If we're just down to the five, I only want to
24 litigate the five. If we're on all 13, then I want to deal
25 with all 13.

1 Mr. Paduano, your --

2 **MR. PADUANO:** It's Anthony --

3 **THE COURT:** Go ahead.

4 **MR. PADUANO:** Your Honor, I'm sorry. It's
5 Anthony Paduano. Yeah, if the Court focuses on five, that
6 will, I think, dispose of the application. We're trying to
7 make things easy.

8 **THE COURT:** All right. Unless somebody wants to
9 make an argument, I'm inclined just to tear into each one
10 individually and figure out whether they pertain to the
11 application for a preliminary injunction or not.

12 Does anybody have any problem with just
13 going into each one of them?

14 **MR. PADUANO:** It's Anthony Paduano. We do not
15 have -- that's fine with us, Your Honor.

16 **MR. COHEN:** That's fine with the Debtors.

17 **THE COURT:** Okay. So Number 1 is:

18 "All documents that were forwarded to or prepared
19 by each of the individual Delaware defendants or
20 any entity other than the Debtors under the
21 ownership or control of any of the individual
22 Delaware defendants and that are now in the
23 Debtors' possession concerning the merger of
24 Deep Marine Holdings, Inc. (DMH) and together
25 with Deep Marine Technologies (DMT) with and into

1 NKOC, Inc., the merger."

2 Now, tell me how that request pertains to
3 the preliminary injunction and then tell me how it doesn't.
4 I'm going to -- on the first one, I'll let Mr. Paduano go
5 first.

6 **MR. PADUANO:** Sure, Your Honor, it goes to --
7 that really goes to the heart of why we're suing Delaware.
8 There was the short-form merger that was done that cancelled
9 our shares. We believe we pleaded through the orchestration
10 of Mr. Kazeminy and Mr. Candies and these are the basic
11 documents. We do not have access to those materials in any
12 form. We have just the notice of short-form merger so we
13 don't know what actually has been accomplished or why or the
14 bona fide of it.

15 **THE COURT:** I mean, the way this is worded --
16 before I let Mr. Cohen speak -- it's much broader than that,
17 and if what you're looking for are the merger documents, the
18 ones that effected the merger as opposed to any document
19 that might concern it, that seems fairly straightforward and
20 I, frankly, don't know whether it's relevant or not but I
21 don't know why it's a problem either.

22 **MR. PADUANO:** And we don't have -- we do have the
23 notice, Your Honor, but we don't have anything else that
24 pertains to it, the valuation. This is a company, for
25 example, that prior to the time of the short-form merger, we

1 had valuation to the tune of \$100 million and thereafter had
2 no value.

3 **THE COURT:** Yeah, but I -- look, all the
4 valuation stuff goes to -- I don't know that that goes to
5 anything under the preliminary injunction.

6 Just getting down the basic merger documents
7 seems to me a sufficient background, that I'd do that.

8 But tell me why, for example, a valuation
9 would go towards the preliminary injunction question?

10 **MR. PADUANO:** Yeah, Your Honor is right. But
11 there are documents there that are going to speak to the
12 motive, the economic rationale for it, that is, how can
13 anything be worth -- a legitimate entity be worth
14 \$100 million one day and nothing the next? So -- and we
15 sued for that, to discover that to find that out because we
16 don't think that that worked out fairly.

17 And that's the basis of our claim in
18 Delaware, that is, that Mr. Candies and Mr. Kazeminy and
19 their entities for their benefit crammed down this
20 transaction to line their pockets, nothing to do with the
21 entities. But that's why we seek it.

22 But you have the short-form merger to --
23 having the document but it gives us no detail as to why
24 things were done and why they weren't done.

25 We'll get to the witnesses in a second but

1 we're trying to get Mr. Kazeminy and Mr. Candies and their
2 entities to testify, the Chief Restructuring Officer can't
3 know anything about that. That's why the documents are
4 important. He wasn't on the scene at the time.

5 **THE COURT:** Tell me though, in detail, how that
6 affects whether or not we should grant a preliminary
7 injunction. I understand fully why that matters as to why
8 there are merits to the claim. And as I understand the
9 Debtors' response, they will, for the purpose of the
10 preliminary injunction hearing, be stipulating that the
11 claim has merits, not for all time but for the purposes of
12 the injunction.

13 So if we assume the claim has merit, why do
14 those documents pertain to whether or not to issue the
15 preliminary injunction?

16 **MR. PADUANO:** Because, Your Honor, it's -- if we
17 get those documents once we get outside the simple little
18 legal document, we understand they're going to stipulate and
19 they're going to say, for purposes of proceeding before you,
20 "We've got it all right just the way we pleaded it." We
21 think the underlying documents will show that Mr. Kazeminy
22 and Mr. Otto [sic] were out to extinguish our shares without
23 regard to the company. There's got to be more than just the
24 document the lawyers finally produced and delivered to us
25 extinguishing us, cancelling our shares. So if that's the

1 only (indiscernible), I don't mean to say we want everything
2 from all the 26 lawyers who have appeared for the Debtors
3 and the defendants -- I did a case in Delaware -- but we
4 sure want some of the documents that provide the rationale
5 and the wherewithal as to how they -- we're worth 100 one
6 day -- and I told you that's because we had an ongoing live
7 entity one day, then one day we didn't. We had no value and
8 our shares were cancelled.

9 And we have things like their debt. You
10 know, debt suddenly appeared on this company for the benefit
11 of Mr. Kazeminy and Mr. Candies' entities that we were
12 unaware of. There was no notice given to us. So in theory,
13 this would be encompassed -- someone made the valuation,
14 someone made the judgment that this was a bona fide
15 corporate transaction to go forward. Just want some of the
16 underlying materials.

17 **THE COURT:** Mr. Cohen?

18 **MR. COHEN:** Your Honor, I think the Court and
19 Mr. Paduano have made my argument for me. He was just
20 speaking to motive and rationale behind the merger. I don't
21 see how that's applicable to who was harmed and that's the
22 question we have to answer to get to the question of
23 substantial likelihood of success on the merits of our cause
24 of action, which is Section 541, declaratory judgment.

25 He said -- Mr. Paduano said that he

1 alleges -- you know, debt was added to the company. Again,
2 that would be a harm to the company.

3 He said he wanted to know how his shares
4 could have gone from 100 million to a dollar. Again, that
5 would go to the value of the company and to his appraisal
6 action which is currently stayed.

7 He said, you know, the directors and
8 officers were trying to line their pockets. Once again,
9 harm to the company. We're not saying that these
10 shareholders -- former shareholders were not harmed. We're
11 saying any harm that might have occurred to them was
12 secondary to the initial harm to the company. The company
13 was allegedly looted. The company allegedly took on
14 inflated debt that was then converted which then was used to
15 "squeeze out" the shareholders. So the initial harm, the
16 key harm is to the Debtor itself, not to the shareholders.

17 And that's -- it doesn't matter what we
18 produce to rationale of value. I mean, we'll stipulate that
19 all the facts in our pleading are true. There's no factual
20 disputes there.

21 **MR. PADUANO:** Your Honor -- and Counsel, I think,
22 misspoke. Mr. Candies and Mr. Kazeminy were not directors
23 or officers. What happened here with this -- these events
24 of which we don't know, some type of debt was created for
25 the purpose of, in effect, increasing their equity stakes in

1 the entity so they could squeeze us out. There are no
2 other shareholders of note. Mr. Kazeminy's entities,
3 Mr. Candies' entities, and us. That's it as far as we know
4 of note. And we believe that it was done in reaction to the
5 Delaware lawsuit in an effort to take away our equity. So
6 they were not directors and officers. They were lining
7 their pockets from the company's coffers. They were doing
8 it at our expense. And some transactions are simply not
9 known to us. And I don't think it's unreasonable for us to
10 get some discovery as to what the bona fide transactions
11 are.

12 **THE COURT:** I guess I don't understand,
13 theoretically, how what they do through the company harms
14 the shareholders individually other than doing it through
15 the company. And tell me what these documents conceivably
16 could show that would show a direct injury rather than an
17 indirect injury.

18 **MR. PADUANO:** It's Anthony Paduano, Your Honor.
19 We don't know what they did. We just don't know what
20 Mr. Candies and Mr. Kazeminy did. But we do know that they
21 had in theory no access to the management of the company.
22 They were not directors, they were not officers, was not --

23 **THE COURT:** So the company can sue them for
24 interference. I don't see how that gives the individual
25 shareholders a claim.

1 **MR. PADUANO:** Because we dealt with that. We
2 paid dues up into the investment.

3 **THE COURT:** What is that?

4 **MR. PADUANO:** They dealt with -- yeah, the
5 controlling shareholders -- Mr. Kazeminy's entities and
6 Mr. Candies' entities all had a fiduciary duty under
7 Delaware law. We cited that to the Court.

8 **THE COURT:** Right, and I --

9 **MR. PADUANO:** They owe us. In this closed
10 corporation, where there's no markets for our securities, we
11 could not ever sell our shares if we were unhappy. They owe
12 us a duty. They cannot manipulate the process to injure us
13 and that's the basis of our claim. So it's not that we're
14 arm's length or equal standing with them, they have -- we're
15 minority investors and they must protect our interests.

16 And the reason we seek these documents and
17 seek to pursue this is because our interests were not just
18 handled badly but that they -- and they keep saying -- and
19 this is the best point we've got: one day the entity's worth
20 100-plus million dollars, the next day it's not. Something
21 happened.

22 **THE COURT:** Yeah, and --

23 **MR. PADUANO:** We need to find out what happened.

24 **THE COURT:** No, but let's assume --

25 **MR. PADUANO:** Something we don't know because we

1 don't have any of the documents as to how this possibly
2 could happen, and I don't think it's unreasonable to assume
3 that something wrong happened to the enterprise. And it
4 suffers no loss under an operational basis during this
5 period of time of note. One day it's worth something, the
6 next day it's not. Mr. Kazeminy and Mr. Candies, they owe
7 us under government law as we fight to the Courts a
8 fiduciary duty to watch our interests.

9 **THE COURT:** Right.

10 **MR. PADUANO:** And we don't think -- we think that
11 the underlying documents would show just the contrary that
12 they've conspired together and I don't know with whom else,
13 but to force us out and to cancel our shares.

14 **THE COURT:** Okay. As to Item -- Document Item
15 Number 1, I will grant the motion for protection. I will
16 deny the motion to compel. My reasons for that are as
17 follows:

18 I agree that there is substantial body of
19 law that has been submitted by Mr. Paduano that shows that
20 the shareholders may, under Delaware law, sue for a breach
21 of fiduciary duty and that there is, in fact, a fiduciary
22 duty that may run to shareholders; however, under bankruptcy
23 law, when the injury to the shareholders is derivative of
24 the corporation, no matter whether there is a separate duty
25 to the individual shareholders, the right to bring the suit

1 belongs to the corporation.

2 And I'm hearing no argument at all by the
3 shareholders as to how any of these documents might reflect
4 any direct injury to them versus an indirect injury that
5 goes through the corporation.

6 And I'm hearing the Debtors stipulate that
7 as to the indirect injury, for the purposes of the
8 preliminary injunction, they will stipulate that all the
9 allegations of wrongdoing occurred.

10 Therefore, I think that the documents are
11 not relevant to the question of the preliminary injunction.

12 I'll grant the motion for protection.

13 Deny the motion to compel.

14 Let's go to Number 2:

15 "All documents concerning DMT shares sold by or
16 for any of the individual Delaware defendants or
17 by any entity other than the Debtors under the
18 ownership or control of any of the individual
19 Delaware defendants including but not limited to
20 documents concerning:

21 "a) The negotiation of the purchase price for
22 such shares; and

23 "b) The consideration actually paid for such
24 shares."

25 Tell me how that relates to the -- or why

1 you should get protection from that, Mr. Cohen? I'll make
2 you go first on Number 2.

3 **MR. COHEN:** Yes, Judge. I mean, basically, I
4 would lump this in as the same argument we just heard for
5 RFP Number 1, to the extent that the purchase price for the
6 shares was diluted, the same argument as RFP Number 1, to
7 the extent they want to know the purchase price so they can
8 establish valuation, the same argument as Number 1, or it's
9 the appraisal action which is stayed. That's it. I mean, I
10 would say this is the exact same request for production, the
11 exact same request, Your Honor.

12 **THE COURT:** Well, what's the Debtor doing? I
13 mean, let's assume for a minute, if you want protection,
14 that the answer is "That we have no such documents."

15 What's the Debtor doing with documents that
16 concern how an individual Delaware defendant sold their
17 shares?

18 Why would the Debtor even be in possession
19 of that?

20 **MR. COHEN:** I don't know what we're in possession
21 of and what we're not in possession of. We --

22 **THE COURT:** Well, why do you need protection over
23 something you're not in possession of?

24 **MR. COHEN:** Well, we may or may not be in
25 possession. We need protection from expending the effort

1 and time and resources to go dig up this information, and to
2 the extent these --

3 **THE COURT:** But sales by individual Delaware
4 defendants are not internal to the corporation, right?

5 **MR. COHEN:** That's true.

6 **THE COURT:** I mean -- and most of your argument
7 is that if all the injury is internal to the corporation,
8 how can it relate?

9 This is external. If they went and sold
10 shares, I mean, I can see how their sale of shares in some
11 fashion could, in fact, adversely affect other shareholders
12 and have nothing to do with the corporation.

13 I don't know if that occurred but at least
14 theoretically it could, and why shouldn't they be able to
15 prove that?

16 **MR. COHEN:** Well, I can see how the sale of some
17 third-party shares could affect the sale price, but I don't
18 see how that's relevant to this proceeding at all, to who
19 owns the causes of action as pled in the complaint.

20 **THE COURT:** Well, the causes of action as pled
21 are one thing.

22 **MR. COHEN:** Uh-huh.

23 **THE COURT:** But, I mean, I've told him he can
24 re-plead.

25 **MR. COHEN:** Right.

1 **THE COURT:** And if he can re-plead, why shouldn't
2 he get that information? I don't see a reason not to give
3 him this.

4 **MR. COHEN:** Well, again, I'd say it's not
5 relevant to this -- to the matter at hand, and so I don't
6 think that the Debtor should have to expend the time and
7 effort to track down this information.

8 **THE COURT:** Well, the -- I mean, the Debtor is
9 just as liable to do -- to respond to discovery in a lawsuit
10 as anybody else if it's a legitimate lawsuit.

11 **MR. COHEN:** Well -- and in this case, discovery
12 should be focused primarily or only on the preliminary
13 injunction. This isn't a fishing expedition to see if
14 there's some other causes of action out there that they then
15 can draft up. And so I don't understand --

16 **THE COURT:** So you want me to make --

17 **MR. COHEN:** -- what cause of action --

18 **THE COURT:** -- them redo this as a 2004 exam?

19 I mean, why are we going to go through that?

20 **MR. COHEN:** Well, I don't understand what cause
21 of action this relates to, Your Honor. All I can understand
22 is that perhaps it relates to the appraisal action and I
23 think that's stayed. That's why I would like for the Debtor
24 to be able to --

25 **THE COURT:** Yeah, tell me why you need it. I

1 don't see a reason to give them protection from it. I also
2 don't know why you need it.

3 So, Mr. Paduano, why do you need it?

4 **MR. PADUANO:** We can -- Your Honor, we need
5 something to do this hearing on the merits, that is, that
6 what these individuals have done in terms of their exercise
7 of duty or not to us, we've got to start somewhere. We're
8 focused on what we've said there because we think that's
9 pretty narrow and not disruptive and not particularly
10 controversial. At some point, there are documents that
11 underlie these actions that we complain about as to whether
12 these claims belong to us which we think they clearly do
13 under Delaware law or to the estate, but at some point, we
14 need a record to deal with -- and the Court needs a record
15 as well to deal with on the 8th so --

16 **THE COURT:** And isn't Number 3 pretty much the
17 same as Number 2?

18 **MR. PADUANO:** Yes, Your Honor, it is.

19 **THE COURT:** Yeah, I'm going to deny the motion
20 for protection, and grant the motion to compel as to
21 Number 2 and Number 3 in that I do think that those
22 documents potentially relate to individual injury caused by
23 non-debtors. I don't know exactly how it's going to happen
24 but I, frankly see no reason to grant the Debtors'
25 protection of that. Those are simple, straightforward and

1 ordinarily would not be in the Debtors' possession. So if
2 the Debtors are in possession of documents that pertain to
3 the shares by the individual shareholders, let's turn them
4 over and we'll see what can happen with them.

5 So I'll compel Production Number 2 and
6 Number 3.

7 Number 4:

8 "All documents sufficient to show the exercise of
9 any DMT stock warrants the conversion of DMT debt
10 to equity or the conversion of DMT equity to debt
11 in each case from 2002 to the present and
12 concerning the shares held by any of the
13 individual Delaware defendants or any entity
14 other than the Debtors under the ownership or
15 control of any of the individual Delaware
16 defendants or claims or debts owed to or by any
17 of the individual Delaware defendants."

18 I assume you mean claims or debts owed to or
19 by any of the individual Delaware defendants to DMT; is that
20 correct?

21 **MR. PADUANO:** You're right, Your Honor, yes, sir.

22 **THE COURT:** Yeah. This, I think, is the same as
23 Number 1, and I don't understand. This is so internal to
24 the corporation and would reflect injury that would be
25 derivative to the corporation.

1 Why would the ruling on this be different
2 than the ruling on Number 1?

3 **MR. PADUANO:** I'm not -- I don't want to rehash
4 Number 1 because I understood clearly what the Court said,
5 but to the extent the documents concern the individual
6 defendants, we think we should get them with their
7 signatures to them, from them, that's all. We're not trying
8 to be -- we're not trying to -- and I don't want to do
9 anything to evade what the Court said, but we're not trying
10 to go into the guts of the corporation as opposed to what
11 the corporation has done in exchange with the individual
12 defendant who we've got no problem with.

13 **THE COURT:** And how can that reflect some
14 individual injury to your clients that isn't derivative of
15 the corporation?

16 **MR. PADUANO:** I don't -- well, because I think
17 that the individual shareholders -- again, they're not
18 officers and directors whom we've sued who were -- well,
19 let's focus on this. Mr. Kazeminy's entities and Candies'
20 other entities, we think they behaved badly and they
21 breached their duties to us, the shareholders. And under
22 Delaware law, they're not supposed to do that. But there's
23 got to be documents here because this badly orchestrated in
24 some form, you know, we -- the Court can tell we're -- it's
25 our belief that it was orchestrated outside the corporation.

1 We could clearly argue that on the 8th, but there are
2 documents that are not internal to the corporation that went
3 to these gentlemen and their entities and were signed or
4 exchanged by and between them. So it's not that we're
5 looking for the thought processes and information to the
6 corporations, but there are dealings with others in our
7 shoes and here the Kazeminy and Candies' entities are like
8 that except they're the majority.

9 **THE COURT:** I'm going to make the same ruling
10 here that I did in Number 1. It seems to me that what we're
11 dealing with in Number 4 and that really the argument made
12 by Mr. Paduano's clients has to do with to whom a duty runs,
13 not to how the injury flows. And as I've indicated at the
14 TRO hearing and indicating today, in evaluating the
15 preliminary injunction, I'm going to assume that there is a
16 duty owed. And the question is:

17 How does the injury flow for determining
18 whether or not it is property of the estate for bringing it?
19 And as long as the injury flows through the Debtor, no
20 matter where the duty flows, I don't see that the documents
21 are relevant. And I'm not hearing how this would result in
22 any direct injury versus indirect injury.

23 Number 5:

24 "All documents upon which the Debtors rely in
25 making their case that the claims of the Delaware

1 defendants exclusively against the individual
2 Delaware defendants are actual property of the
3 Debtors' estate."

4 That's asking for an exhibit list.

5 When are you going to give them an exhibit
6 list because I'm going to require that anyway?

7 **MR. COHEN:** Well, we can do it according to local
8 rules. We're going to use the same as exhibits as for the
9 TRO, so I'll reproduce those tomorrow. And as we come up
10 with any new exhibits, we'll turn them over immediately.

11 So we'll stipulate to produce for Number 5.

12 **THE COURT:** All right. So I'm going to grant the
13 motion to compel 2, 3, and 5.

14 I'll deny the motion to compel 1 and 4.

15 I'll grant the motion for protection on 1
16 and 4.

17 And I'll deny the motion for protection on
18 2, 3, and 5.

19 I'll issue an order to that effect.

20 Thank you.

21 **MR. COHEN:** Your Honor, there are a couple more
22 issues.

23 **THE COURT:** What else do we have?

24 **MR. COHEN:** Did somebody drop off?

25 Is Mr. Paduano still on?

1 **THE COURT:** I'm sure he's still here.

2 **MR. COHEN:** Okay.

3 **MR. PADUANO:** We're on. Yes, we're here,
4 Your Honor.

5 **THE COURT:** Okay.

6 **MR. COHEN:** Your Honor, there's also been five
7 depositions that we're aware of, one of which has been
8 noticed to the company, to Mr. Bittner, our CRO, and we've
9 agreed to produce Mr. Bittner to be deposed on the four
10 elements of preliminary injunction to the extent that he
11 can.

12 But these other four depositions relate
13 really to Misters Kazeminy; Candies; Hudgeons, our former
14 CFO; and Abbady (sp.ph.), our former COO. If we get some
15 guidance from the Court as to the propriety of those
16 depositions, the Debtor feels that none of those depositions
17 are appropriate.

18 **THE COURT:** Yeah, I'm not going to restrict who
19 he can depose. I think I've already set forth in fairly
20 good detail the subject matter where I believe is relevant,
21 and if those folks have relative information that is
22 discoverable, he can take their deposition. I'm not going
23 to protect them from giving a deposition.

24 If the scope of the deposition exceeds the
25 permissible bounds, then you all need to arrange for a

1 hearing at that point. Contact -- file something, contact
2 Ms. Dolezel from the depositions. Let's not have everybody
3 leave the depositions and come back. I'm not planning to go
4 anywhere between now and -- when are we coming back,
5 February the 8th?

6 **MR. COHEN:** Yes.

7 **MR. PADUANO:** Yes, Your Honor.

8 **THE COURT:** I'll be in town. And so you all may
9 have to wait a couple of hours till I get out of a hearing
10 but get something short on file, ask Ms. Dolezel to give you
11 an emergency hearing, you'll have your court reporter there
12 to read back the questions, and I'll try and resolve them.
13 But my rulings are going to be very consistent with what
14 I've done today.

15 And I'm not going to sit here and say that
16 Mr. Kazeminy does or does not know anything. They get to
17 ask Mr. Kazeminy what he knows and what he doesn't know
18 about the subjects of the preliminary injunction. And If
19 they ask him about things that aren't within the subject of
20 the preliminary injunction, you can seek to get a protection
21 order at that point. And if he refuses to answer questions
22 that are within the scope of the preliminary injunction,
23 then Mr. Paduano can seek to compel. And I'll do all of
24 that with somewhat immediate hearings. So file a short
25 motion and call Ms. Dolezel.

1 **MR. COHEN:** And for clarity, Your Honor, while
2 we're all here, matters related to facts pled in the
3 complaint we do not believe they are relevant -- to facts
4 pled in the Delaware complaint, we do not believe they are
5 relevant to the preliminary injunction.

6 Can the Court give us some guidance?

7 **THE COURT:** Well, I mean, I've expressed that --
8 my views about that multiple times. I'm not going to do it
9 again. I'm going to try your application for a preliminary
10 injunction, and as to whether there may be things that are
11 or aren't relevant, I don't know. We'll deal with it. I'm
12 just not going to sit here and deal with every potential
13 question that might be asked or might be objected to. So
14 when you get there -- I mean, you know, I think I've been
15 pretty available to the parties for emergency hearings on
16 pretty short notice and I will continue to be available. I
17 know how important this is to everybody's clients. But I
18 think you and Mr. Paduano filed these things either
19 yesterday or today and you're getting the hearing within
20 24 hours so I wouldn't complain too much if I were you about
21 that.

22 **MR. COHEN:** No complaints, Your Honor. There are
23 a couple -- we had some other agenda items set for today in
24 the main case.

25 **THE COURT:** I did not realize that. Go ahead.

1 **MR. COHEN:** May I consult with Mr. Wood for one
2 moment please?

3 **THE COURT:** Yeah.

4 **(Pause/Counsel confer)**

5 **MR. COHEN:** Thank you, Judge, for that couple of
6 minutes there. I have to just dive back in. And we
7 understand the Court's ruling, and we intend to comply and
8 produce documents pursuant to RFPs 2 and 3 and 5, to the
9 extent we have any documents. We don't know -- I don't know
10 standing here if we do or do not. If we do and they have
11 some confidential information, we may have to come back to
12 the Court and ask that those only be produced pursuant to a
13 confidentiality agreement. I just want to make the Court
14 aware of that.

15 **THE COURT:** Yeah, although if you've got
16 documents that show the sales of stock by a shareholder and
17 the corporation has them, I have somewhat of a hard time
18 thinking that's going to be terribly confidential, but we'll
19 see. Come back if you need to. But let's get the documents
20 to Mr. Paduano.

21 Mr. Paduano, if he thinks he needs a
22 protective order, I want you to go ahead and take the
23 documents, keep them in confidence and then we'll get you
24 all a quick hearing on whether or not they're going to be
25 protected. The protection, if you all can't agree to it,

1 will be governed by my order but I don't want the documents
2 held up while we're figuring out whether or not there's a
3 protective order. So if you get them, why don't you go
4 ahead and maintain them in the confidence that he wants and
5 I'll get you a hearing pretty quick as to whether or not you
6 need to maintain that confidence rather than holding up the
7 documents.

8 Does that work for you?

9 **MR. PADUANO:** I understand, Your Honor. And,
10 yes, I think it does.

11 **THE COURT:** Thank you.

12 **MR. COHEN:** Thank you, Judge.

13 Moving on to the main case now.

14 **THE COURT:** All right.

15 **MR. COHEN:** We have ripe today, Bracewell and
16 Guiliani's retention for application. That is Docket
17 Number 78.

18 **THE COURT:** All right.

19 **MR. COHEN:** We have received no objections to
20 this. We did receive some informal inquiries into the
21 specifics of some entities that we represented in matters
22 unrelated to this case and we've answered those. I don't
23 believe there's anymore questions or comments.

24 **THE COURT:** Is that actually set on the Docket or
25 is it just something that's ready to deal with?

1 **MR. COHEN:** We self-calendared, I believe,
2 Your Honor, and it should be on today's agenda.

3 **THE COURT:** When you say you self -- I want to
4 just try and get this squared away. You all filed it at
5 Docket 78 on December 31, so it is now ripe for
6 consideration.

7 **MR. COHEN:** I think by -- I think on that time we
8 did not self-calendar. We put it on the agenda for today.

9 **THE COURT:** Okay. That's not the way things get
10 on the agenda, so what else you got?

11 **MR. COHEN:** Well, I think it's going to probably
12 be the same issue then, Your Honor.

13 **THE COURT:** Okay.

14 **MR. COHEN:** We have our motion for interim
15 compensation procedures.

16 **THE COURT:** Okay. I'll take both those up in
17 Chambers. I don't think they actually made it to an agenda.
18 If you want them on an agenda, they've got to be calendared
19 for today somehow.

20 **MR. COHEN:** Okay.

21 **THE COURT:** And you can calendar them for today
22 by requesting a hearing. You can calendar them for today by
23 self-calendaring them. But you can't just put them in a
24 notebook to me where nobody else knows what's going forward
25 today.

1 **MR. COHEN:** When I say, "On the agenda,"
2 Your Honor, I mean on the Court's website agenda just to be
3 clear.

4 **THE COURT:** Well, I didn't --

5 **MR. COHEN:** I didn't just bring them on a piece
6 of paper.

7 **THE COURT:** Well, what website agenda now? I
8 just -- I want to get this squared away for the future.

9 **MR. COHEN:** On the -- on your homepage, there's a
10 link to upload proposed agenda. I thought that was how we
11 self-calendared for omnibus dates.

12 **MR. RAY:** Your Honor, Hugh Ray for the Committee.
13 I was not aware of the agenda. It was not served on me
14 personally and haven't seen a notice filed with the Court.
15 And my understanding of the complex procedures order does
16 not said that that's how we calendar things. We either
17 calendar them by self-calendaring or by contacting the
18 Court's case manager and obtaining a setting or by open
19 court order.

20 **MR. COHEN:** I would beg to differ with the Court
21 then.

22 **THE COURT:** I'm going -- I'm not prepared on
23 those two actually, so I'm not going to take them up, but I
24 want to get this squared away for the future so --

25 **MR. RAY:** And just -- Your Honor, my

1 understanding of the way a complex procedures order works
2 is: we have a caption that we can self-calendar for dates
3 that have been selected by the Court and they're published
4 on the Court's website.

5 And I thought the agenda was to deal with
6 the orientation of things within the --

7 **MR. SPEAKER:** Case?

8 **MR. RAY:** -- that are going within the case that
9 are going forward.

10 But be that as it may, I didn't receive an
11 agenda. And if it's just posted on a Court's website and I
12 don't receive it, then I don't know what's set and I've
13 got --

14 **THE COURT:** Yeah, I mean, the agenda that got
15 posted got posted at 11:25 this morning.

16 **MR. COHEN:** It was updated at 11:25, Your Honor.

17 **THE COURT:** Okay.

18 **MR. COHEN:** But that's fine, we're happy if the
19 Court would take that up in Chambers.

20 I'd just like to point out one difference
21 for one of the proposed orders, if I may?

22 **THE COURT:** Okay.

23 **MR. COHEN:** The proposed order for -- that I was
24 going to present to the Court today for the motion for
25 interim compensation procedure is slightly different from

1 that which has been uploaded. I've added to the fee parties
2 and I've added counsel for Nasser Kazeminy, Otto Candies,
3 LLC, and certain related entities that are not Debtors.
4 I've added those parties -- those as fee parties. They get
5 notice, so they will get monthly notice of the monthly fee
6 statements.

7 **THE COURT:** Let me get you to upload so that
8 everybody can look at your proposed order.

9 **MR. RAY:** Your Honor, I want to say that that's a
10 non-consensual modification. He was -- I was consulted on
11 the modification. I've objected to the modification. I've
12 not agreed to the modification. The motion was filed. It
13 had 20-day notice language. The time to object is filed.
14 Mr. Kazeminy can't just -- when noticed of the motion, he
15 did not file an objection.

16 **THE COURT:** Yeah, the Debtors get to try and
17 reach agreements to stop people from filing objections. I'm
18 not going to get upset about that.

19 **MR. RAY:** The Committee is concerned that if it's
20 the --

21 **THE COURT:** I'll tell you what, I'm not hearing
22 this today.

23 **MR. RAY:** Okay. Thank you, Your Honor.

24 **THE COURT:** That's the main issue. I'm not going
25 to hear something that I didn't know was set for today. I

1 don't think it's properly set.

2 When is your next hearing?

3 **MR. COHEN:** I don't know, Your Honor. Thursday,
4 Your Honor.

5 **MR. RAY:** February 4th is the next one. There is
6 a -- there's one on the -- there's one coming up but I don't
7 believe anything is set on that day. The next hearing date
8 is February 4th, and I believe there are two matters
9 scheduled on that day.

10 **THE COURT:** Okay. The next hearing is February
11 the 4th. Let's take up -- we'll go ahead and calendar for
12 February the 4th Docket Number 78 and Docket Number 85.
13 We'll take them up then. I don't see any real reason to do
14 them without more adequate notice, namely, to me. So we'll
15 take them up then.

16 Now, do we need to do anything else?

17 **(No verbal response)**

18 Okay, thank you. We'll be in adjournment.

19 **(This proceeding was concluded at 3:36 p.m.)**

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1 *I certify that the foregoing is a correct transcript from*
2 *the electronic sound recording of the proceedings in the*
3 *above-entitled matter.*

4 */s lmartin*

5

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